

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)
) Case No. 09-06311
Carlyle Group, Ltd.,) Chapter 7
) Judge Timothy A. Barnes
)
Debtor.)

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 13th day of July, 2016, at the hour of 10:00 a.m., or as soon thereafter as counsel can be heard, I shall appear before the Honorable Timothy A. Barnes, Bankruptcy Judge, in room 744 of the United States Bankruptcy Court in the Everett McKinley Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, or before any other Judge who may be sitting in his place and stead and shall present **Motion of Trustee to Allow and Pay Secured Claim of Fifth Third Bank in Reduced Amount and for Allowance and Payment of Attorneys Fees and Trustee Fees Pursuant to Section 506(c) of the United States Bankruptcy Code**, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith.

AT WHICH TIME and place you may appear if you so see fit.

/s/Eugene Crane
Crane, Heyman, Simon, Welch & Clar
135 S. LaSalle St., Suite 3705
Chicago, Illinois 60603
(312) 641-6777

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath deposes and states that he caused a copy of the foregoing Notice and attached Motion to be served electronically or via U.S. First Class Regular Mail on the attached service list, properly addressed and postage prepaid on the 17th day of June, 2016, before the hour of 5:00 p.m.

/s/ Eugene Crane

SERVICE LIST

Parties served electronically:

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FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)	
)	Case No. 09-06311
Carlyle Group, Ltd.,)	Chapter 7
)	Judge Timothy A. Barnes
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Debtor.)	

**MOTION OF TRUSTEE TO ALLOW AND PAY SECURED CLAIM OF FIFTH THIRD
BANK IN REDUCED AMOUNT AND FOR ALLOWANCE AND PAYMENT OF
ATTORNEYS FEES AND TRUSTEE FEES PURSUANT TO SECTION 506(c) OF THE
UNITED STATES BANKRUPTCY CODE**

The Trustee, EUGENE CRANE, by his attorneys, Eugene Crane and the firm of Crane, Heyman, Simon, Welch & Clar, in support of his Motion to Allow and Pay Secured Claim of Fifth Third Bank ("Fifth Third") in Reduced Amount and for Allowance and Payment of Attorneys Fees and Trustee Fees Pursuant to Section 506(c) of the United States Bankruptcy Code, states as follows:

1. This case was filed as a voluntary Chapter 11 bankruptcy proceeding on February 26, 2009 and was converted to a Chapter 7 bankruptcy proceeding on June 16, 2009, at which time Eugene Crane was appointed Trustee of this estate and continues to act in this capacity.

2. On November 6, 2009, Fifth Third filed a Proof of Claim, which has been labeled Claim no. 28 by the Clerk of the Bankruptcy Court. That Proof of Claim asserts a secured claim in the amount of \$1,440,126.10 and an unsecured claim in the amount of \$498,716.58. The Proof of Claim asserts a blanket security interest on all of the Debtor's

assets, including inventory and accounts receivable.

3. On or about September 29, 2009, the Bankruptcy Court entered an Order Modifying Automatic Stay to Allow Fifth Third Bank to Apply and Setoff Cash Collateral Against its Secured Claim, whereby, Fifth Third was allowed to setoff the estate's bank account in an amount not exceeding \$940,126.10.

4. On July 16, 2009 this Court entered an order authorizing the Trustee to employ himself and the law firm of Crane, Heyman, Simon, Welch & Clar as counsel to the Trustee as of June 16, 2009. On or about November 17, 2010, the Bankruptcy Court entered an Amended Order Authorizing the Employment of Special Counsel, whereby the Trustee was authorized to retain Peter A. Silverman and the law firm of Figliulo and Silverman as special counsel to the Trustee ("Special Counsel") to investigate and prosecute potential preference claims and fraudulent transfer claims and to collect outstanding accounts receivable. The retention of Special Counsel provided for that firm to be paid on a contingency fee basis of 33.0%, plus costs, based on the gross amount of any recovery obtained as a result of verdict, judgment, or offer of settlement, as provided by the retainer letter dated November 5, 2010, attached hereto as Exhibit "A" and incorporated by reference herein. Fifth Third consented to payment of legal fees and costs from the proceeds of its collateral pursuant to Section 506(c) of the United States Bankruptcy Code.

5. As of this date, Special Counsel has collected approximately \$306,484.61 of preference claims ("Preference Collections") and approximately \$167,865.69 of accounts receivable claims ("A/R Collections"), as detailed in the Summary of Funds attached hereto as Exhibit "B" and incorporated by reference herein.

6. In addition, the Trustee has collected approximately \$171,000.23 ("PP Collections") from liquidation of personal property subject to the security interest of Fifth Third. Accordingly, from the A/R Collections and the PP Collections, the Trustee has collected approximately \$338,865.92 ("Liquidation Proceeds"), which are subject to the security interest of Fifth Third, in addition to the approximate sum of \$940,126.10 previously applied to Fifth Third's secured claim, which total the amount of \$1,278,992.02 ("Fifth Third Secured Claim"). This results in Fifth Third holding an unsecured claim in the amount of \$659,850.66 ("Fifth Third Unsecured Claim").

7. Special Counsel has completed its responsibilities with respect to A/R Collections which are subject to the security interest of Fifth Third, as well as with respect to Preference Collections.

8. Pursuant to this motion the Trustee seeks allowance and payment of the following from the Liquidation Proceeds:

- a) Special Counsel's attorneys fees: \$55,395.68 (33% of A/R Collections) (\$42,431.11 of which has been allowed and paid pursuant to Court Order) [Docket no. 214]
 - b) Special Counsel's costs: \$1,876.45 (which has been allowed and paid in full pursuant to Court Order) [Docket no. 214]
 - c) Trustee's fees: \$56,652.39 (unpaid)
- Total Section 506(c) claim: \$113,924.52 ("506(c) Claim")

9. The Trustee's fees are calculated as follows:

Preference Collections:	\$ 306,484.61
Bank account interest:	\$ 39.70
Liquidation Proceeds:	\$ 338,865.92
Fifth Third Bank account:	<u>\$ 940,126.10</u>
Total:	\$1,585,516.33

Statutory Trustee fee: \$ 70,815.49

Fifth Third collateral:	
Liquidation Proceeds:	\$338,865.92
Fifth Third bank account:	<u>\$940,126.10</u>
Total:	\$1,278,992.02

Non-Fifth Third assets:

Preference Collections:	\$306,484.61
Bank account interest:	<u>\$ 39.70</u>
Total:	\$306,524.31

Calculation of Trustee's fee:

a) $\$1,278,992.02 / \$1,585,516.33 = 0.80$ or 80 percent of statutory Trustee fee of \$70,815.49 = \$56,652.39 allocated to Fifth Third assets

b) $\$306,524.31 / \$1,585,516.33 = 0.20$ or 20 percent of statutory Trustee fee of \$70,815.49 = \$14,163.10 allocated to non-Fifth Third assets

10. The balance due and owing on the Fifth Third Secured Claim is as follows:

\$338,865.92 (Liquidation Proceeds)
<u>(\$113,924.52) (506(c) Claim)</u>
\$224,941.40 (balance of Fifth Third Secured Claim)

11. As indicated in the letter dated June 2, 2016, attached hereto as Exhibit "C", Fifth Third has consented to this Motion.

WHEREFORE, for the foregoing reasons, the Trustee, Eugene Crane, by his attorneys, Eugene Crane, and the firm of Crane, Heyman, Simon, Welch & Clar prays for

the entry of an Order:

- a) Allowing the Fifth Third Secured Claim in the reduced amount of \$1,278,992.02;
- b) Allowing the Fifth Third Unsecured Claim in the amount of \$659,850.66;
- c) Allowing and authorizing the payment of the 506(c) Claim to special counsel and the Trustee, as described herein;
- d) Authorizing the Trustee to pay the unpaid balance of the Fifth Third Secured claim in the amount of \$224,941.40; and
- e) For such other relief as this Court deems just.

Respectfully submitted,

EUGENE CRANE, TRUSTEE

By : /s/Eugene Crane
One of his attorneys

Trustee's Counsel

EUGENE CRANE, ESQ.

Attorney no.0537039

CRANE, HEYMAN, SIMON, WELCH & CLAR

Attorneys for Trustee

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